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Lump Sum Means Lump Sum (Still): Uniform Building Contractors Ltd v WASA [2026] UKPC 2

Uniform Building Contractors Ltd v The Water and Sewerage Authority of Trinidad and Tobago (Trinidad and Tobago) [2026] UKPC 2

Date: 22 January 2026

Judges: Lord Hamblen, Lord Leggatt, Lady Rose, Lord Richards, Sir Peter Coulson

Key Words:

Construction Law, Privy Council, FIDIC Yellow Book, Design and Build, Lump Sum Contract, Variations, Clause 20.1, Condition Precedent, Notice Provisions, Time Bar, Engineer's Authority, Waiver, Estoppel

Summary

This judgment concerns an appeal by the Water and Sewerage Authority of Trinidad and Tobago ("**WASA**") against a decision of the Court of Appeal, which had awarded Uniform Building Contractors Ltd ("**UBC**") approximately TT$13.9 million for disputed work under a pipelaying contract [1-2]. The Judicial Committee of the Privy Council allowed the appeal, overturning the Court of Appeal and reinstating the trial judge's dismissal of UBC's claim [1, 88].

The Board held that the four items of disputed work claimed by UBC were **not variations** but were expressly or impliedly included in the fixed lump sum price of the design and build contract [3, 69]. Furthermore, even if the items were variations, UBC failed to comply with the **contractual notice requirements** under Clause 20.1 of the FIDIC conditions, which acts as a condition precedent to payment [60, 66]. The Board also rejected the Court of Appeal's reasoning regarding waiver and estoppel, ruling that the Engineer had no authority to amend the contract or waive its procedural requirements [79].

Key Themes:

1. ***Lump Sum Design and Build Contracts****: The contractor is deemed to have satisfied themselves regarding the price and site conditions, bearing the risk for work expressly or impliedly included in the contract price [17, 23-24].*
2. ***Definition of Variations****: Work required to meet the contractual specifications (such as excavation methods or backfilling) constitutes fulfilling the contract, not a variation [23, 32-33].*
3. ***Conditions Precedent (Clause 20.1)****: The requirement to give notice of a claim within 28*

days is a strict condition precedent; failure to comply discharges the employer from liability [61, 66].

4. ***Authority of the Engineer****: Under the FIDIC conditions, the Engineer acts for the employer but has no authority to amend the contract or relieve parties of their obligations [77, 79].*
5. ***Waiver and Estoppel****: These principles must be explicitly pleaded and evidenced at trial; they cannot be raised for the first time on appeal [71-73].*

Background

1. **The Contract:** In May 2007, WASA and UBC entered into a contract for the design, supply, and installation of 28.43 km of pipeline [1]. The contract incorporated the **FIDIC Yellow Book (1999 Edition)**, which is a standard form for design and build projects with a lump sum price [15, 17].
2. **The Dispute:** UBC claimed additional payment for four items of work they argued were variations instructed by the Engineer: (i) laying pipes in the roadway (cutting asphalt) rather than the verge; (ii) removing unsuitable excavated material; (iii) importing suitable backfill; and (iv) night work [3].
3. **Procedural History:**
    1. The contract was terminated in 2009 [2].
    2. UBC commenced proceedings in 2013 [2].
    3. The **High Court** dismissed the claim, finding the contract covered all eventualities and the fixed price included the disputed work [8-9].
    4. The **Court of Appeal** overturned this, ruling that the Engineer had approved the work as variations and waived the procedural notice requirements based on "fairness" [10, 11(50)].

Legal Issues and Analysis

1. **Were the Disputed Items Variations?** – The Board determined that none of the four items were variations because they fell within the scope of the **Employer's Requirements** or the **Works** [30-31].
    1. **Contract Nature:** As a lump sum contract, UBC was responsible for the design and was deemed to have satisfied itself regarding site conditions [17, 20(ii)].
    2. **Specific Items:**
        1. ***Roadway Excavation****:* The specifications expressly envisaged cutting through asphalt and reinstating the roadway [35]. Since UBC was responsible for the design, changing the route from verge to roadway was a design decision for which they were liable [34].
        2. ***Backfill****:* The contract explicitly stated that if excavated material was unsuitable, the contractor must import appropriate backfill [40-41]. This was priced in the Bill of Quantities [41-42].
        3. ***Night Work****:* This was either an attempt to catch up on delays (which were UBC's responsibility) or permitted under the site working arrangements [44-46].
2. **Procedural Failures and Condition Precedent** – The Board analysed **Clause 20.1** of the FIDIC conditions, which requires the contractor to give notice of a claim within 28 days [57].
    1. **Condition Precedent:** The Board confirmed that Clause 20.1 is a condition precedent. It expressly states that if notice is not given, the contractor "shall not be entitled to additional payment" and the employer "shall be discharged from all liability" [57, 61].

2. **Failure to Comply:** UBC failed to give notice of the claims within 28 days or seek a determination from the Engineer [59]. Consequently, they were barred from making any claim [66].
3. **Effect of Termination:** The Court of Appeal erred in suggesting Clause 20.1 did not apply because the contract was terminated. The Board held that rights and obligations accrued prior to termination remain, and the time for making claims had expired long before the 2009 termination [68-69].

3. **Waiver, Estoppel, and Fairness** – The Board rejected the Court of Appeal's finding that the Engineer had waived the contractual requirements.
    1. **Pleadings:** Waiver and estoppel were never pleaded by UBC nor raised at trial, meaning they could not be relied upon in the Court of Appeal [71].
    2. **Engineer's Authority: Clause 3.1** of the FIDIC conditions explicitly states the Engineer "shall have no authority to amend the Contract" and cannot relieve either party of their obligations [77]. Therefore, the Engineer could not legally waive the requirement for UBC to submit proper notices [79].
    3. **Contractual Certainty:** Relying on *Rock Advertising*, the Board emphasised that courts should give effect to clauses limiting the authority to vary terms to preserve commercial certainty [80].

Conclusion

The Judicial Committee of the Privy Council concluded that the Court of Appeal's decision was legally flawed. The disputed works were part of the fixed lump sum contract and not variations [50]. Even if they were variations, UBC's claim was barred because they failed to comply with the strict notice provisions in **Clause 20.1**, which served as a condition precedent to payment [66]. Additionally, the arguments regarding waiver and fairness were procedurally inadmissible and substantively wrong because the Engineer lacked the contractual authority to waive the notice requirements [84-88].

***Key Takeaway**:*

*In a **FIDIC lump sum contract**, the contractor assumes the risk for all work expressly or impliedly included in the price. Compliance with the **Clause 20.1 notice provision is a strict condition precedent** to recovery; failure to adhere to it discharges the employer from liability. Furthermore, an **Engineer cannot orally waive** contractual terms or procedural requirements if the contract explicitly restricts their authority to amend the contract or relieve parties of their obligations.*

Parting Thoughts

Uniform Building Contractors v WASA is not a judgment that breaks new ground. It does something far more useful: it bulldozes over ground that should never have been reopened in the first place.

The contractor entered into a FIDIC Yellow Book design-and-build contract, priced on a lump sum, packed with risk-allocation language of almost theatrical clarity. It then attempted—years later—to recharacterise ordinary contractual performance as variations, sidestep the notice regime that governed claims, and dress the whole exercise up as an appeal to fairness. The Privy Council's response was brisk, forensic, and entirely unsentimental.

First, the Board reaffirmed the core bargain. In a lump sum design-and-build contract, the contractor prices the risk of how the works will actually be carried out. If excavation turns out to be inconvenient, if materials are unsuitable, or if night working becomes necessary, that is not a variation; it is the contract doing exactly what it said it would do. An underestimate is not an entitlement—it is the price

of certainty.

Second, the judgment leaves no room for doubt about Clause 20.1. The notice requirement is a condition precedent in the strictest sense. Miss it, and the claim is not weakened; it is extinguished. Termination does not revive it. Sympathy does not soften it. The employer is discharged from liability because that is what the parties agreed. Certainty, not indulgence, is the point.

Third, the Board decisively dismantled the Court of Appeal's flirtation with waiver, estoppel and "fairness". These doctrines are not free-floating concepts to be deployed when the paperwork runs out. They must be pleaded, proved, and grounded in authority. An engineer who is expressly denied the power to amend the contract cannot somehow acquire it by being busy on site. Cooperation is not waiver. Silence is not consent. And fairness is not a substitute for compliance.

What emerges is a judgment that is unapologetically orthodox—and deliberately so. It reinforces that FIDIC contracts are not aspirational documents, to be adjusted retrospectively by reference to how the project felt at the time. They are systems. If you use the system, it works. If you ignore it, it doesn't.

The lesson is therefore not subtle. Lump sum contracts allocate risk. Notice provisions matter. Engineers cannot rewrite bargains. And courts will not rescue parties from contracts that turned out to be harder than expected.

In short, Uniform is the sound of the law clearing its throat and saying: we've been over this.

#ConstructionLaw #PrivyCouncil #FIDIC #Clause20 #ConditionPrecedent #ContractLaw #DesignAndBuild #TimeBar #Waiver #Estoppel #TrinidadAndTobago #LumpSumContract #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Contractual Notice Provisions and Conditions Precedent

1. ***NH International (Caribbean) Ltd v National Insurance Property Development Co Ltd* [2015] UKPC 37; [2015] BLR 667** – *The Board relied on this decision to affirm that FIDIC notice provisions are conditions precedent. It held that clause 2.5 (employer's claims), which is similar in structure to clause 20.1 (contractor's claims), requires a prompt claim in a specified form; without it, no claim, set-off, or crossclaim can arise.*
2. ***Obrascon Huarte Lain SA v Attorney General for Gibraltar* [2014] EWHC 1028 (TCC); [2014] BLR 484** – *Cited as authority where Akenhead J treated clause 20.1 of the FIDIC 1999 Form as a condition precedent to payment.*
3. ***Tata Consultancy Services Ltd v Disclosure and Barring Service* [2025] EWCA Civ 380; [2025] 4 WLR 42**, *para 26 – Relied upon for the proposition that clauses requiring a specific provision to be fulfilled before a corresponding right arises are commonly construed as conditions precedent.*
4. ***Bremer Handelsgesellschaft mbH v Vanden Avenne-Izegem PVBA* [1978] 2 Lloyd's Rep 109** – *Cited to define the feature of a condition precedent as the dependency between the requirement and the relief; one must be conditional upon the other.*
5. ***Scottish Power UK plc v BP Exploration Operating Co Ltd* [2015] EWHC 2658 (Comm); [2016] 1 All ER (Comm) 536**, *para 206 – Used to support the view that the link between contractual steps in a condition precedent must usually be expressed in terms of obligation*

(that X must necessarily lead to Y).

6. ***Gordon Winter Co Ltd v NH International (Caribbean) Ltd*** **[2025] UKPC 52** *(which focused on clause 12.3 of the FIDIC 1999 Form (Silver Book)) – Distinguished by the Board. While this case allowed a claim despite procedural non-compliance, it involved a remeasurement contract where variations were undisputed and, crucially, the facts established that both parties had agreed to waive the procedural provisions.*
7. ***Vim Engineering Pte Ltd v Deluge Fire Protection (S.E.A.) Pte Ltd*** **[2023] SGHC(A) 2** *– Distinguished by the Board. This Singaporean decision found a notice provision was not a condition precedent because the clause was not "stringent" and lacked the "if X, then Y" formulation found in clause 20.1 of the FIDIC contract (i.e., it did not explicitly state rights would be forfeited).*

Lump Sum Contracts and Variations

1. ***Sharpe v San Paulo Railway Co*** **(1873) LR 8 Ch App 597, 607** *– Relied upon for the principle that in a lump sum contract, an underestimate of the work required to meet contractual requirements is not a variation but is "precisely the thing which [the contractor] took the chance of".*

Waiver, Estoppel, and Contractual Authority

1. ***MWB Business Exchange Centres Ltd v Rock Advertising Ltd*** **[2018] UKSC 24; [2019] AC 119** *– Cited as the leading authority on clauses restricting oral modifications. The Board relied on Lord Sumption's reasoning that such clauses prevent abuse and misunderstandings and preserve commercial certainty. It also established that estoppel requires more than just an informal promise; there must be an unequivocal representation that the variation is valid despite the lack of formality.*
2. ***Actionstrength Ltd v International Glass Engineering IN.GL.EN SpA*** **[2003] 2 AC 541**, *paras 9, 51 – Cited within the Rock Advertising extract to reinforce the point that "something more" is required to support an estoppel defence than the informal promise itself.*
3. ***Sutcliffe v Thackrah*** **[1974] AC 727** *– Relied upon to describe the quasi-independent role of the Engineer as "holding the ring" and acting fairly, which justifies contractual limits on the Engineer's authority to amend the contract since they are not a party to it.*

Effect of Termination on Accrued Rights

1. ***Johnson v Agnew*** **[1980] AC 367, 393** *– Cited for the principle that termination operates prospectively rather than retrospectively, meaning contract terms govern conduct up to the point of termination.*
2. ***Hurst v Bryk*** **[2002] 1 AC 185, 199** *– Relied upon to confirm that because termination has a forward-looking effect, rights and obligations that have already been unconditionally acquired remain unaffected.*
3. ***Photo Production Ltd v Securicor Transport Ltd*** **[1980] AC 827, 849** *– Cited to support the proposition that upon termination, parties are discharged from future performance, but liable for breaches committed prior to termination.*
4. ***Howard-Jones v Tate*** **[2011] EWCA Civ 1330; [2012] 2 All ER 369**, *para 15 – Cited to affirm that termination does not wipe out rights and obligations that have already accrued.*

Appellate Intervention on Findings of Fact

1. ***Christo Gift v Dr Keith Rowley*** **[2025] UKPC 37** *– Relied on by the Appellant for the proposition that an appellate court should only interfere with findings of fact if satisfied the trial judge was "plainly wrong".*
2. ***Volpi v Volpi*** **[2022] EWCA Civ 464; [2022] 4 WLR 48** *– Cited regarding the principle that appellate courts should generally be warned against interfering with findings of fact (though the Board noted this principle did not apply here as the trial judge made negligible findings).*

Legal Texts & Commentary:

Lump Sum Contracts and Variations

Keating on Construction Contracts, 12th ed (2025) *– The Board relied on this text to establish the test for determining whether an item of work constitutes a variation in a lump sum contract. The test is whether the item is "expressly or impliedly included in the work for which the lump sum is payable".*

Conditions Precedent and Notice Provisions

Understanding the FIDIC Red and Yellow Books, 3rd ed (2018), Jeremy Glover and Simon Hughes KC *– This text was cited to support the conclusion that clause 20.1 is a condition precedent. The Board noted the authors' view that parties must understand compliance with notice provisions is intended to be a condition precedent to recovery, and that non-compliance potentially provides a complete defence to any claim commenced outside the prescribed time.*

Contractual Formality and Authority

Keating on Construction Contracts, 12th ed (2025) *– The text was cited again to support the Board's rejection of the argument that the Engineer could waive strict contractual requirements. The Board endorsed the view that while there is a difference between varying the work and varying the contract terms, a strict approach to contractual provisions regarding the form of changes can consistently be applied to both.*

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ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
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